

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FRANCIS D. TYMENSKY, :
Petitioner, :
v. : Case No. 2:09-cv-1094-KAP
JOHN H. FORADORA, PRESIDENT :
JUDGE, JEFFERSON COUNTY COURT OF :
COMMON PLEAS, and LARRY STRAITIFF, :
CHIEF PROBATION OFFICER, :
Respondents :
:

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on August 20, 2009, docket no. 2, recommending that the complaint be construed as a petition for a writ of habeas corpus and as such be summarily denied without prejudice for lack of exhaustion of state remedies. See Rule 4 of the Rules Governing Habeas Corpus Cases under Section 2254 in the United States District Courts, 42 U.S.C.

The petitioner was notified that pursuant to 28 U.S.C. § 636(b)(1), he had ten days to serve and file written objections to the Report and Recommendation. Petitioner filed additional material on August 31, 2009, see docket no. 3, docket no. 4, repeating his original double jeopardy claim and complaining about money being taken from his inmate account, but petitioner has not addressed the central points of the Report and Recommendation,

which are that petitioner is seeking habeas corpus relief and that to obtain relief petitioner must first exhaust his remedies in state court.

After de novo review of the record of this matter, the Report and Recommendation, and the filings subsequent thereto, the following order is entered:

AND NOW, this 17th day of September, 2003, it is

ORDERED that the petitioner's petition for a writ of habeas corpus is denied without prejudice. A certificate of appealability is denied. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:



DONETTA W. AMBROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Notice by U.S. Mail to:

Francis D. Tymensky
Jefferson County Prison
578 Service Center
Brookville, PA 15825